

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GREGORY LYNN GALES,

Plaintiff,

v.

CASE NO. 09-3180-SAC

J. BYRON MEEKS,
et al.,

Defendants.

O R D E R

This action was filed as a civil rights complaint, 42 U.S.C. § 1983, by an inmate of the Hutchinson Correctional Facility. Plaintiff paid an initial partial filing fee, and his motion to proceed without prepayment of fees was granted¹.

On September 30, 2009, the court entered an Order granting plaintiff time to show cause why this action should not be dismissed for the reasons stated in that Order. Plaintiff was also required within the same time period to state any objection he may have to this court's designation of this case and one of his closed civil cases as "prior occasions" or "strikes" under 28 U.S.C. §

¹ Plaintiff is reminded that pursuant to 28 U.S.C. §1915(b)(1), he remains obligated to pay the remainder of the \$350.00 district court filing fee in this civil action. Being granted leave to proceed in forma pauperis entitles him to pay the filing fee over time through payments from his inmate trust fund account as authorized by §1915(b)(2). Pursuant to §1915(b)(2), the Finance Office of the facility where plaintiff is currently confined is directed by copy of this Order to collect twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

1915(g).

On October 7, 2009, plaintiff filed a Notice of Appeal. The appeal was interlocutory in nature, and this court issued an order declining to issue a written certification. In that Order, this court noted this matter was "not automatically stayed by the filing of a notice of interlocutory appeal, . . . the court has not stayed the proceedings . . . (and) [p]laintiff's response to the court's Order of September 30, 2009, is due shortly." On October 19, 2009, plaintiff's interlocutory appeal was dismissed by the Tenth Circuit Court of Appeals for lack of jurisdiction.

The time in which plaintiff was required to comply with the court's Order of September 30, 2009, has expired. Mr. Gales was forewarned that if he failed to comply with that order in the time allotted, this action could be dismissed without further notice. Plaintiff has filed no response to the court's Order and has thus failed to show cause why this action should not be dismissed for the reasons stated therein. He also failed to file any objections to the court's designation of two strikes against him. Accordingly, this action shall be dismissed. Furthermore, this action, if it is not reversed on appeal, shall count as a "prior occasion" under § 1915(g). In addition, the court now designates Gales v. Gatterman, Case No. 06-3330 (D.Kan. Jan. 3, 2007, unpublished)(Summary dismissal pursuant to 28 U.S.C. § 1915A(b) because two defendants immune from suit for money damages and no state action as to third defendant) as a "prior occasion".

IT IS THEREFORE ORDERED that this action is dismissed and

all relief is denied for the reasons stated herein and in the court's Order dated September 30, 2009, which include that plaintiff fails to state a claim cognizable under § 1983.

IT IS FURTHER ORDERED that this action, if it is not reversed on appeal, and Gales v. Gatterman, Case No. 06-3330 (D.Kan. Jan. 3, 2007, unpublished) shall count as "prior occasions" or strikes under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that plaintiff is required to pay the remainder of the filing fee due in this case through payments deducted from his inmate account.

The clerk is directed to transmit a copy of this order to the finance office at the institution where plaintiff is currently confined.

IT IS SO ORDERED.

Dated this 30th day of October, 2009, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge